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First Named Inventor	Patrick Rooney Conarro
Art Unit	3727
Examiner Name	Castellano, Stephen J
Attorney Docket Number	CID-0401

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PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

APPLICANT(S): Conarro

EXAMINER: Castellano, Stephen

SERIAL NO.: 10/782,237

ART GROUP: 3727

FILED: February 19, 2004

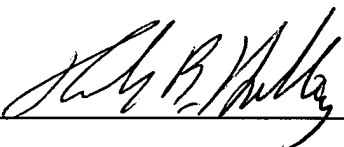
Case No.: CID-0401

ENTITLED: Combination Meal Serving Tray

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APPEAL BRIEF

Honorable Commissioner of
Patents and Trademarks
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

This is an updated appeal brief in response to the Office Action dated February 3, 2006. This is an appeal from the final rejection of claims 1-20 of the Office Action dated September 9, 2005. This application was filed on February 19, 2004. Appellant submits this Appeal Brief pursuant to 35 U.S.C. §134 and 37 C.F.R. § 41.37 in furtherance of the Notice of Appeal filed in this case on November 10, 2005. The fees required under 37 C.F.R. §1.17(b) and any other necessary fees were paid with the original Appeal Brief.

I. Real Party In Interest

The real party in interest is: CIDX Inc., a corporation organized and existing under the laws of the state of Delaware, and having a place of business at 19 East Williamette, Unit D, Colorado Springs, CO 80907. See the Assignment recorded at Reel 015010, Frame 0176.

II. Related Appeals And Interferences

There are no appeals or interferences related to the present appeal.

III. Status Of Claims

Claims 1-20 (see Appendix) are pending in this application. Claims 1-20 are rejected and are involved in this appeal.

IV. Status Of Amendments

No amendment has been filed subsequent to the final rejection of September 9, 2005.

V. Summary Of Claimed Subject Matter

A combination meal serving tray has a pair of legs and cup holder to keep the tray off the ground. The shape of the legs and the cup holder allow the user to hold the tray by the cup holder and rest the tray on their forearm. This makes it easy to carry and hold with one hand. In addition, the spacing between the legs and cup tray is setup so that it fits across a thigh of the user. (Specification page 4, lines 3-7)

FIG. 1 is a top right perspective view of a combination meal serving tray 10 accordance with one embodiment of the invention. The combination meal serving tray 10 has a pair shaped housing 12 along the top perimeter. The housing 12 has a pair of legs 14. The housing 12 also has a cup well 16 at a first end. A food well 18 is formed in the second end of the housing 12. The food well 18 may include a second well 20. The spacing 22 between the pair of legs 14 and the cup well 16 is about the size of a human thigh. This allows a user to balance the tray on their thigh. (Specification page 4, lines 8-15)

The cup well 16 has a plurality of structural ribs 24 along a top or upper portion of the cup well 16. The lower section of the cup well 16 has a plurality of compressible ribs 26. The structural ribs 24 provide structural support for the cup well 16 since the cup well 16 acts as the third leg of the tray 10. The compressible ribs 26 allow the cup well 16 to snugly hold a variety of different cup sizes without holding the cup too tight. The compressible ribs 26 are formed of a thinner plastic material than the rest of the housing 10. (Specification page 4, lines 16-22)

VI. Grounds of Rejection to be Reviewed on Appeal

1. Whether claims 1-6, 10, 13 and 15-19 rejected under 35 USC 102(b) are anticipated by Pace et al (5,259,528).
2. Whether claims 1-6 rejected under 35 USC 102(b) are anticipated by Young, Sr. (5,118,063).
3. Whether claims 1-6, 10, 13 and 15-19 rejected under 35 USC 102(b) are anticipated by Panta Chica (D 398,480).
4. Whether claims 1-6, 10, 13 and 15-19 rejected under 35 USC 103(a) as being unpatentable over Pace et al, Young or Panta Chica (D 398,480) in view of Cinque(US 6,702,141).
5. Whether claims 7-9 rejected under 35 USC 103(a) are unpatentable over Pace, Young, Panta Chica or (Pace, Young, or Panta Chica in view of Cinque) in view of Chantaca, Wright and Howell et al.
6. Whether claims 11, 12 and 14 rejected under 35 USC 103(a) are unpatentable over Pace, Panta Chica or (Pace, Young, or Panta Chica in view of Cinque) in view of Chantaca, Wright and Howell.
7. Whether claim 20 rejected under 35 USC 103(a) is unpatentable over Pace, Young, Panta Chica and (Pace, Young, or Panta Chica in view of Cinque) in view of de Chollet, Williamson and MacGregor Jr.
8. The Examiner has objected to claim 20 because the features were missing from the figures.

VII. Argument

Issue 1. Whether claims 1-6, 10, 13 and 15-19 rejected under 35 USC 102(b) are anticipated by Pace et al (5,259,528).

"A rejection for anticipation under section 102 requires that each and every limitation of the claimed invention be disclosed in a single prior art reference." *In re Paulsen*, 30 F.3d 1475, 31 USPQ2d 1671, 1673 (Fed. Cir. 1994). Claim 1 requires that the housing be substantially pear shaped. The reason for this is it allows efficient layout of the trays in the horizontal direction on a serving preparation table or for shipping in a container as shown in FIG. 7. See page 5 of the specification. Pace, FIG. 1, clearly shows a housing that does not stack efficiently in the horizontal direction and is clearly not pear shaped. Claim 1 is allowable.

Claim 2 is allowable as being based upon an allowable base claim.

Claim 3 requires the cup well to have a plurality of compressible ribs. The Examiner points to element 17, protrusions, of Pace. However, FIG. 2 of Pace clearly shows that 17 is not a rib. Pace states that element 19 are ribs. (Column 2, lines 62-63) Claim 3 is clearly allowable over the prior art.

Claim 4 requires an arch in the bottom of the food well. The arch 36 can be seen in FIG. 3 of the present application and allows the user to rest the tray on their forearm. (See Page 5, first paragraph of the specification.) The Examiner states that Pace shows the convex curve is a cutout at an end of the arch. This is clearly incorrect. There is no arch in the food well 15 of Pace. Claim 4 is clearly allowable.

Claim 5 requires a cutout at the end of the arch. As clearly explained above none of the prior art references cited by the Examiner show an arch, so they cannot show a cutout in the arch. Claim 5 is allowable.

Claim 6 requires that the food well have a lip along the top edge. The lip 30 is shown in FIG.s 1 & 3 and is designed to receive a lid 28. None of the prior art references have lip along the top edge of the food well. Claim 6 is allowable

Claim 10 requires that the housing be substantially pear shaped. The reason for this is it allows efficient layout of the trays in the horizontal direction on a serving preparation table or for shipping in a container as shown in FIG. 7. See page 5 of the specification. Pace, FIG. 1, clearly shows a housing that does not stack efficiently in the horizontal direction and is clearly not pear shaped. Claim 10 is allowable.

Claim 10 also requires an arm impression formed in the bottom of the food well. The arm impression 36 can be seen in FIG. 3 and allows the user to rest the tray on their forearm. (See Page 5, first paragraph of the specification.) The Examiner states that Pace shows the convex curve is a cutout at an end of the arch. This is clearly incorrect. There is no arch in the food well 15 of Pace. The rejection must be withdrawn. Claim 10 is clearly allowable.

Claim 10 also requires two food wells. FIG. 1 of Pace clearly shows a single food well. Claim 10 is allowable.

Claim 13 is allowable as being dependent upon an allowable base claim.

Claim 15 requires the cup well to have a plurality of compressible ribs. The Examiner points to element 17, protrusions, of Pace. However, FIG. 2 of Pace clearly shows that 17 is not a rib. Pace states that element 19 are ribs. Claim 15 is allowable over the prior art.

Claims 16-17 & 19 are allowable as being dependent upon an allowable base claim.

Claim 18 requires that the tray be designed to nest horizontally. The reason for this is it allows efficient layout of the trays in the horizontal direction on a serving preparation table or for shipping in a container as shown in FIG. 7. See page 5 of the specification. Pace, FIG. 1, clearly shows a housing that does not stack efficiently in the horizontal direction. Claim 18 is allowable.

Issue 2. Whether claims 1-6 rejected under 35 USC 102(b) are anticipated by Young, Sr. (5,118,063).

"A rejection for anticipation under section 102 requires that each and every limitation of the claimed invention be disclosed in a single prior art reference." *In re Paulsen*, 30 F.3d 1475, 31 USPQ2d 1671, 1673 (Fed. Cir. 1994). Claim 1 requires that the housing be substantially pear shaped. The reason for this is it allows efficient layout of the trays in the horizontal direction on a serving preparation table or for shipping in a container as shown in FIG. 7. See page 5 of the specification. FIG. 1 of Young, clearly shows a housing that does not stack efficiently in the horizontal direction and is clearly not pear shaped. Claim 1 is allowable.

Claim 2 requires that the cup well have a plurality of structural ribs. The structural ribs 24 can be seen in FIG. 1 of the specification of the present application. Young does not show structural ribs nor does the Examiner point to any element as structural ribs. Claim 2 is allowable.

Claim 3 requires the cup well to have a plurality of compressible ribs. Young has three coaxial bores 24, 27 and 30 but these are not ribs. Claim 3 is clearly allowable over the prior art.

Claim 4 requires an arch in the bottom of the food well. The arch 36 can be seen in FIG. 3 of the present application and allows the user to rest the tray on their forearm. (See Page 5, first paragraph of the specification.) Young has a food well 12 that clearly does have an arch. Claim 4 is clearly allowable.

Claim 5 requires a cutout at the end of the arch. As clearly explained above none of the prior art references cited by the Examiner show an arch, so they cannot show a cutout in the arch. Claim 5 is allowable.

Claim 6 requires that the food well have a lip along the top edge. The lip 30 is shown in FIG.s 1 & 3 and is designed to receive a lid 28. None of the prior art references have lip along the top edge of the food well. Claim 6 is allowable

Issue 3. Whether claims 1-6, 10, 13 and 15-19 rejected under 35 USC 102(b) are anticipated by Panta Chica (D 398,480).

"A rejection for anticipation under section 102 requires that each and every limitation of the claimed invention be disclosed in a single prior art reference." *In re Paulsen*, 30 F.3d 1475, 31 USPQ2d 1671, 1673 (Fed. Cir. 1994). Claim 1 requires that the housing be substantially pear shaped. The reason for this is it allows efficient layout of the trays in the horizontal direction on a serving preparation table or for shipping in a container as shown in FIG. 7. See page 5 of the specification. FIG. 1 of

Panta Chica, clearly shows a housing that does not stack efficiently in the horizontal direction and is clearly not pear shaped. Claim 1 is allowable.

Claim 2 requires that the cup well have a plurality of structural ribs. The structural ribs 24 can be seen in FIG. 1 of the specification of the present application. Panta Chica does not show structural ribs and the Examiner has not pointed to any element as showing structural ribs. Claim 2 is allowable.

Claim 3 requires the cup well to have a plurality of compressible ribs. Panta Chica does not show compressible ribs and the Examiner has not pointed to any structure in Panta Chica to support the rejection. Claim 3 is allowable over the prior art.

Claim 4 requires an arch in the bottom of the food well. The arch 36 can be seen in FIG. 3 of the present application and allows the user to rest the tray on their forearm. (See Page 5, first paragraph of the specification.) Panta Chica shows an arch in FIG. 1, but FIG. 3 makes it clear that the arch is not part of the food well. Claim 4 is clearly allowable.

Claim 5 requires a cutout at the end of the arch. As clearly explained above none of the prior art references cited by the Examiner show an arch, so they cannot show a cutout in the arch. Claim 5 is allowable.

Claim 6 requires that the food well have a lip along the top edge. The lip 30 is shown in FIG.s 1 & 3 and is designed to receive a lid 28. None of the prior art references have lip along the top edge of the food well. Claim 6 is allowable

Claim 10 requires that the housing be substantially pear shaped. The reason for this is it allows efficient layout of the trays in the horizontal direction on a serving preparation table or for shipping in a container as shown in FIG. 7. See page 5 of the specification. FIG. 1 of Panta Chica, clearly shows a housing that does not stack

efficiently in the horizontal direction and is clearly not pair shaped. Claim 10 is allowable.

Claim 10 also requires an arm impression formed in the bottom of the food well. The arm impression 36 can be seen in FIG. 3 and allows the user to rest the tray on their forearm. (See Page 5, first paragraph of the specification.) Panta Chica shows an arch in FIG. 1, but FIG. 3 makes it clear that the arch is not part of the food well. Claim 10 is clearly allowable.

Claim 10 also requires two food wells. Panta Chica shows a single food well and a number of wells for sauces. Claim 10 is allowable.

Claim 13 is allowable as being dependent upon an allowable base claim.

Claim 15 requires the cup well to have a plurality of compressible ribs. Panta Chica does not show compressible ribs and the Examiner has not pointed to any structure in Panta Chica to support the rejection. Claim 15 is clearly allowable over the prior art.

Claims 16-17 & 19 are allowable as being dependent upon an allowable base claim.

Claim 18 requires that the tray be designed to nest horizontally. The reason for this is it allows efficient layout of the trays in the horizontal direction on a serving preparation table or for shipping in a container as shown in FIG. 7. See page 5 of the specification. FIG. 1 of Panta Chica, clearly shows a housing that does not stack efficiently in the horizontal direction. Claim 18 is allowable.

Issue 4. Whether claims 1-6, 10, 13 and 15-19 rejected under 35 USC 103(a) as being unpatentable over Pace et al, Young or Panta Chica (D 398,480) in view of Cinque (US 6,702,141).

The question of obviousness requires that we determine if the references, taken as a whole, would suggest the invention to one of ordinary skill in the art. *Medtronic, Inc. v. Cardiac Pacemakers, Inc.*, 721 F.2d 1563, 220 USPQ 97 (Fed. Cir. 1983).

Claim 1 requires that the housing be substantially pear shaped. The reason for this is it allows efficient layout of the trays in the horizontal direction on a serving preparation table or for shipping in a container as shown in FIG. 7. See page 5 of the specification. Pace, FIG. 1, clearly shows a housing that does not stack efficiently in the horizontal direction and is clearly not pear shaped. Young, clearly shows a housing that does not stack efficiently in the horizontal direction and is clearly not pear shaped. Panta Chica, clearly shows a housing that does not stack efficiently in the horizontal direction and is clearly not pear shaped. The Examiner also cites Cinque as showing a pear shape. While this is true, Cinque does not have a food well formed in the housing or three legs where the cup well acts as the third leg. Cinque's refreshment center is "not a tray in the conventional sense. Instead, it securely holds almost any type of beverage container and one or more plates and combines the two into a unitary article." Cinque Page 3, lines 14-17. As a result, the purpose of Cinque is not the same as Pace, Young or Panta Chica and the Examiner is just picking and choosing elements of each reference to recreate the claim after the fact. Cinque never discusses a reason for selecting a pear shape or suggested any advantage for doing so. In addition, Cinque does not have the same preparation motivation as a food tray for having an efficient stacking in the horizontal direction. The examiner has "selected bits and pieces from

prior patents that might be modified to fit its” conclusion. This is not the correct standard for non-obviousness. *Panduit Corp. v. Dennison Manufacturing Co.*, 810 F.2d 1561, 1 USPQ2d 1593, 1605 (Fed. Cir. 1987). Claim 1 is allowable.

Claim 2 is allowable as being based upon an allowable base claim.

Claim 3 requires the cup well to have a plurality of compressible ribs. The Examiner points to element 17, protrusions, of Pace. However, FIG. 2 of Pace clearly shows that 17 is not a rib. Pace states that element 19 are ribs. (Column 2, lines 62-63) Young has three coaxial bores 24, 27 and 30 but these are not ribs. Panta Chica does not show compressible ribs and the Examiner has not pointed to any structure in Panta Chica to support the rejection. Cinque also does not have compressible ribs, so clearly the combination cannot show or suggest compressible ribs. Claim 3 is clearly allowable over the prior art.

Claim 4 requires an arch in the bottom of the food well. The arch 36 can be seen in FIG. 3 of the present application and allows the user to rest the tray on their forearm. (See Page 5, first paragraph of the specification.) The Examiner states that Pace shows the convex curve is a cutout at an end of the arch. This is clearly incorrect. There is no arch in the food well 15 of Pace. Young has a food well 12 that clearly does have an arch. Panta Chica shows an arch in FIG. 1, but FIG. 3 makes it clear that the arch is not part of the food well. Cinque does not have food well. Cinque’s refreshment center is “not a tray in the conventional sense. Instead, it securely holds almost any type of beverage container and one or more plates and combines the two into a unitary article.” Cinque Page 3, lines 14-17. The combination of the references clearly does not show or suggest an arch in the bottom of the food well. Claim 4 is clearly allowable.

Claim 5 requires a cutout at the end of the arch. As clearly explained above none of the prior art references cited by the Examiner show an arch, so they cannot show a cutout in the arch. Claim 5 is allowable.

Claim 6 requires that the food well have a lip along the top edge. The lip 30 is shown in FIG.s 1 & 3 and is designed to receive a lid 28. None of the prior art references have lip along the top edge of the food well. Claim 6 is allowable

Claim 10 requires that the housing be substantially pear shaped. The reason for this is it allows efficient layout of the trays in the horizontal direction on a serving preparation table or for shipping in a container as shown in FIG. 7. See page 5 of the specification. Pace, FIG. 1, clearly shows a housing that does not stack efficiently in the horizontal direction and is clearly not pear shaped. Young, clearly shows a housing that does not stack efficiently in the horizontal direction and is clearly not pear shaped. Panta Chica, clearly shows a housing that does not stack efficiently in the horizontal direction and is clearly not pear shaped. The Examiner also cites Cinque as showing a pear shape. While this is true, Cinque does not have food well formed in the housing or three legs where the cup well acts as the third leg. Cinque's refreshment center is "not a tray in the conventional sense. Instead, it securely holds almost any type of beverage container and one or more plates and combines the two into a unitary article." Cinque Page 3, lines 14-17. As a result, the purpose of Cinque is not the same as Pace, Young or Panta Chica and the Examiner is just picking and choosing elements of each reference to recreate the claim after the fact. Cinque never discusses a reason for selecting a pear shape or suggested any advantage for doing so. In addition, Cinque does not have the same preparation motivation as a food tray for having an efficient stacking in the horizontal direction. The Examiner has "selected bits and pieces from

prior patents that might be modified to fit its” conclusion. This is not the correct standard for non-obviousness. *Panduit Corp. v. Dennison Manufacturing Co.*, 810 F.2d 1561, 1 USPQ2d 1593, 1605 (Fed. Cir. 1987). Claim 10 is allowable.

Claim 10 also requires an arm impression formed in the bottom of the food well. The arm impression 36 can be seen in FIG. 3 and allows the user to rest the tray on their forearm. (See Page 5, first paragraph of the specification.) The Examiner states that Pace shows the convex curve is a cutout at an end of the arch. This is clearly incorrect. There is no arch in the food well 15 of Pace. Young has a food well 12 that clearly does have an arch. Panta Chica shows an arch in FIG. 1, but FIG. 3 makes it clear that the arch is not part of the food well. Cinque does not have food well. Cinque’s refreshment center is “not a tray in the conventional sense. Instead, it securely holds almost any type of beverage container and one or more plats and combines the two into a unitary article.” Cinque Page 3, lines 14-17. The combination of the references clearly does not show or suggest an arch in the bottom of the food well. The rejection must be withdrawn. Claim 10 is clearly allowable.

Claim 13 is allowable as being dependent upon an allowable base claim.

Claim 15 requires the cup well to have a plurality of compressible ribs. The Examiner points to element 17, protrusions, of Pace. However, FIG. 2 of Pace clearly shows that 17 is not a rib. Pace states that element 19 are ribs. Young has three coaxial bores 24, 27 and 30 but these are not ribs. Panta Chica does not show compressible ribs and the Examiner has not pointed to any structure in Panta Chica to support the rejection. Cinque also does not have compressible ribs, so clearly the combination cannot show or suggest compressible ribs. Claim 15 is allowable over the prior art.

Claims 16-19 are allowable as being dependent upon an allowable base claim.

Issue 5. Whether claims 7-9 rejected under 35 USC 103(a) are unpatentable over Pace, Young, Panta Chica or (Pace, Young, or Panta Chica in view of Cinque) in view of Chantaca, Wright and Howell et al.

The question of obviousness requires that we determine if the references, taken as a whole, would suggest the invention to one of ordinary skill in the art. *Medtronic, Inc. v. Cardiac Pacemakers, Inc.*, 721 F.2d 1563, 220 USPQ 97 (Fed. Cir. 1983).

Claims 7-9 are allowable as being dependent upon an allowable base claim.

Issue 6. Whether claims 11, 12 and 14 rejected under 35 USC 103(a) are unpatentable over Pace, Panta Chica or (Pace, Young, or Panta Chica in view of Cinque) in view of Chantaca, Wright and Howell.

The question of obviousness requires that we determine if the references, taken as a whole, would suggest the invention to one of ordinary skill in the art. *Medtronic, Inc. v. Cardiac Pacemakers, Inc.*, 721 F.2d 1563, 220 USPQ 97 (Fed. Cir. 1983).

Claims 11, 12 & 14 are allowable as being dependent upon an allowable base claim.

Issue 7. Whether claim 20 rejected under 35 USC 103(a) is unpatentable over Pace, Young, Panta Chica and (Pace, Young, or Panta Chica in view of Cinque) in view of de Chollet, Williamson and MacGregor Jr.

The question of obviousness requires that we determine if the references, taken as a whole, would suggest the invention to one of ordinary skill in the art. *Medtronic, Inc. v. Cardiac Pacemakers, Inc.*, 721 F.2d 1563, 220 USPQ 97 (Fed. Cir. 1983).

Claim 20 is allowable as being dependent upon an allowable base claim.

Issue 8. The Examiner has objected to claim 20 because the features were missing from the figures.

FIG. 1 was modified to show the features and a substitute paragraph has been included in the response dated June 30, 2005. No new matter was added and the objection should be withdrawn.

VIII. Claims Appendix

1. A combination meal serving tray, comprising:

a substantially pear shaped housing having a pair of legs;
a food well formed in the housing; and
a cup well formed in the housing acting a third leg to hold the tray off the ground.
2. The tray of claim 1, wherein the cup well has a plurality of structural ribs.
3. The tray of claim 2, wherein the cup well has a plurality of compressible ribs.
4. The tray of claim 1, wherein the food well has an arch in a bottom of the food well.
5. The tray of claim 4, wherein the food well has a cutout at an end of the arch.
6. The tray of claim 1, wherein the food well has a lip along a top edge.
7. The tray of claim 6, further including a lid that fits over the lip.
8. The tray of claim 7, wherein the food well includes a primary well and a secondary well.
9. The tray of claim 8, wherein the lid has a depression that fits over the secondary well to form a liquid tight seal.

10. A combination meal serving tray, comprising:

a pear shaped housing having a pair of legs;
a drink well formed in the housing opposite the pair legs, forming a third leg;
a first food well formed in the housing having an arm impression formed in a bottom of the first food well; and
a second food well formed in the housing.

11. The tray of claim 10 further including a lid that fits over the first food well.

12. The tray of claim 11, wherein the lid fits over the second food well.

13. The tray of claim 10, wherein the tray can be nested with similar trays.

14. The tray of claim 11, wherein the first food well and the second food well have a perimeter lip for engaging the lid.

15. A combination meal serving tray, comprising:

a housing having a pair legs, wherein there is an opening between the pair of legs;
a drink well formed in the housing having a plurality of compressible ribs;
a food well formed in the housing.

16. The tray of claim 15, wherein there is a cutout area between the drink well and the pair legs.

17. The tray of claim 15, wherein the tray is designed to be nested vertically.

18. The tray of claim 15, wherein the tray is designed to be nested horizontally.

19. The tray of claim 15, wherein the tray is disposable.
20. The tray of claim 15, wherein the tray is formed of plastic and the compressible ribs have thickness that is less than a rest of the housing.


IX. Evidence Appendix

None

X. Related Proceedings Appendix

None

Respectfully submitted,
(Conarro)

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